IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 1735 of 1995

For Approval and Signature:

Hon'ble MR.JUSTICE M.C.PATEL

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : NO

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

PRATAPSINH GAMBHISINH RAJ

Versus

ABHESING MADHAVSING, S/O GULABSING RATHOD

Appearance:

MR PJ VYAS for Petitioner

MR KM DARJI for Respondent No. 1

CORAM : MR.JUSTICE M.C.PATEL

Date of decision: 28/03/2000

ORAL JUDGEMENT

#. This petition under Article 227 of the Constitution of India arises out of application under Section 70(b) of the Bombay Tenancy and Agricultural Lands Act,1947 filed by the Respondent No.1 claiming tenancy over the land in question.

#. The Mamlatdar and Agricultural Lands Tribunal held that Respondent No.1 was tenant as claimed by him.

The Deputy Collector by his order dated 28.7.1978 set aside the order and remanded the case to the Agricultural Lands Tribunal. Again the Mamlatdar held in favour of Respondent No.1 but Deputy Collector again set aside the order of the Mamlatdar and remanded the matter. On second remand, the Mamlatdar by his order dated 15.5.1985 held that Respondent No.1 was not the tenant. The Respondent No.1 filed appeal before the Deputy Collector who by his order dated 23.7.1986 dismissed the same. The Respondent No.1 filed revision application before the Revenue Tribunal. The Tribunal by its judgment and order dated 20.1.1995 allowed the said revision application and remanded the appeal to the Deputy Collector.

#. It is the said judgment and order of the Tribunal which is under challenge in this petition under Article 226 of the Constitution of India.

#. The Tribunal upheld the contention raised on behalf of Respondent No.1 that notice of hearing had not been served on his Advocate by the Deputy Collector. The Tribunal also held that the Deputy Collector should have condoned the delay and decided the matter on merits. The Tribunal therefore thought it proper to remand the matter to the Deputy Collector for deciding the matter afresh according to law after hearing all the parties.

#. In the circumstances of the case, it cannot be said that the Tribunal had committed an error of law in remanding the matter to Deputy Collector to decide the appeal on merits. There is no warrant for interference in exercise of writ jurisdiction under Article 227 of the Constitution of India. The petition therefore fails and is dismissed. Rule discharged with no order as to costs. Since this is a very old matter there is no doubt that the Deputy Collector would accord due priority to the case.

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m.m.bhatt